



## REQUEST FOR PROPOSALS

# RFP 2019-044

### Project Management / Owner's Representative Services

July 29, 2019

The Town of Westerly/Westerly Schools (Town), Westerly, RI, acting through its Purchasing Agent, is hereby soliciting sealed bids for the above referenced RFQ and you are hereby invited to submit a Proposal for the Scope of Work described in this Request for Proposal, in strict accordance with the Bid Documents.

#### **TERMS AND CONDITIONS**

Bids shall be based on the Terms and Conditions as referenced in this Request for Quotation.

#### **BID DUE DATE/SUBMITTING INSTRUCTIONS**

**BIDS ARE DUE** and MUST BE SUBMITTED on the attached **BID FORM, Attachments B, NO LATER THAN 02:00 p.m., EST, Tuesday, August 20, 2019.** A Bid submitted on other than the attached BID BREAKDOWN FORM may be rejected. Envelopes containing bids **must be** sealed and addressed to the undersigned, at the Purchasing Department, 2nd Floor office, Westerly Town Hall, 45 Broad St., Westerly, RI 02891 and must be clearly marked with the Name and Address of Bidder, Bid Due Date and Time, and RFQ Number and Title. Bidders must include one original, TEN copies and a Digital (soft) copy on CD or flash drive of the Bid as defined in the Instruction to Bidders.

#### **BIDDER'S QUESTIONS**

Questions regarding this solicitation must be emailed and received by the Purchasing Agent at [mbednarski@westerlyri.gov](mailto:mbednarski@westerlyri.gov) no later than **8/13/2019, 12:00PM**, in a Microsoft Word attachment with the corresponding solicitation number. Questions, if any, and responses will be posted on the Town of Westerly website at [www.westerlyri.gov](http://www.westerlyri.gov) as an addendum to this solicitation. Bidders are responsible for checking the Town's website for all addenda distributed in response to questions and requests for additional information.

#### **SPECIAL INSTRUCTIONS TO BIDDERS**

1. Bidder shall base the Proposal on providing all materials and equipment, FOB jobsite.
2. Price must include a 5% Bid Bond and cost of Payment and Performance **Bonds**. The successful subcontractor will be required to post a 100% Payment and Performance Bond.
3. Bidder's prices shall include all **Permits/Fees**.
4. Quotes must be firm for a minimum of 90 days from date of submission.
5. Bid Completeness - Pricing submitted on this project must be an all-inclusive price. The intent of an all-inclusive Price is such that no Adds or Change Orders will be necessary.

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6. If the Bidder submits a supporting/additional document with their bid, that document must include page numbers.
- 9 This project is **Tax exempt** for Rhode Island Sales Tax and Federal Excise Taxes.

**10. SELECTION CRITERIA** - The evaluation will be completed by the Selection Team. The members of the Team will, individually and collectively, evaluate each properly submitted proposal, and shall, select a group of finalists. Each finalist will be interviewed by the Team to determine, all factors considered, the most qualified and capable Bidder with which to contract. While the fee schedules will be discussed and considered during these interviews, fees alone will not drive the committee's decision. Please see Scope of Work for the detailed criteria.

### **RFQ BID DOCUMENTS**

**Attachment A** – Scope of Work/ Project Schedule, Pages 1 through 6

**Attachment B** – Bid Form Page 1 through 2

**Attachment C** – Instruction to Bidders Pages 1 through 6

**APPENDIX A** - Bidder Certification Page 1 through 4

**Westerly Standard Form of Agreement** – Pages 1 through 8

**BIDDER CERTIFICATION and DISCLOSURE FORM:** Bidders must include, complete, sign and submit a Bidder Certification Form with each bid proposal. See APPENDIX A.

This solicitation is available at [www.westerlyri.gov](http://www.westerlyri.gov).

The Town of Westerly/Westerly Schools reserves the right to reject any/all bids, waive any informalities in the bids received and to accept and award the bid to the lowest evaluated bid deemed most favorable to the interest of the Town/School.

The Town/School does not discriminate based on age, color, gender, national origin, race, religion, sexual orientation, or disability in accordance with applicable laws and regulations

Regards,

**Mark Bednarski**

Purchasing/Risk Manager

**Town of Westerly/ Westerly Public Schools**

45 Broad Street

Westerly, RI 02891

Tel: (401) 348-2625

Email: [mbednarski@westerlyri.gov](mailto:mbednarski@westerlyri.gov)

[www.WesterlyRI.gov](http://www.WesterlyRI.gov)

## ATTACHMENT "A"

### **SCOPE OF WORK**

#### **(And Project Schedule and Document Requirements)**

#### **Project Management / Owner's Representative Services**

RFP 2019 – 044

### **Submission Criteria**

#### **I. Project Overview**

The Westerly Building Committee is soliciting proposals from qualified firms that provide Project Management/Owner's Representative Services. The selected firm will provide Project Management/Owner's Representative Services (PM) Services during the construction of multiple school building project being planned for the spring of 2020. The role of the PM will be to assist the Westerly Public Schools in coordinating and being on site throughout the construction of the various projects.

#### **II. Scope of Services**

The selected firm will assist the Building Committee with the oversight and implementation of the project immediately after the bond vote, throughout the construction of the project and will be responsible to manage all aspects of communication for the Westerly Building Committee, and work alongside the architect.

#### **A. Base Services**

##### **1. Full Project(s) Design through Construction Documents**

**a. Project Budget:** In the early stages of design development, prepare a final project budget for all categories of work. This will become the basis for all financial reporting as the project progresses through its completion to RIDE.

**b. Update Project Schedule:** Update the 'master schedule' for the comprehensive project, from programming through commissioning and turnover of the final phase of construction, with copies to the Building Committee, the architect, and RIDE.

**c. Recommend Contract Provisions:** Prepare contract provisions for inclusion in the construction specifications that focus on general contractor performance to ensure quality, and to control cost and schedule objectives.

**d. Signed Weekly Time Sheet:** The successful Bidder will be expected to submit weekly time sheets for approval by the Westerly representative which must show all worked hours with the agreed upon unit rates and allowed expenses.

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### 2. Bid Phase

**a. Contracting Methodology:** Working collaboratively with Westerly Public Schools and the Architect to develop the bidding and contracting methodology that best meets the specific needs of Westerly Public Schools and the direction of the Building Committee.

**b. Contractor Pre-Qualification:** Assist the Westerly Building Committee in establishing pre-qualification criteria, developing a list of qualified contractors and soliciting bidder interest.

**c. Bidding:** Conduct a pre-bid meeting to communicate the project requirements and bidding process to contractors. Facilitate the requests for information (RFIs) process to ensure accurate and timely responses to bidder questions. Analyze and evaluate submitted bids and provide recommendations to the Westerly Building Committee on bidder selection and award. Assist the Westerly Building Committee and the Architect and facilitate the establishment of the final Construction Contract(s).

**d. Value Engineering:** Solicit and analyze options and respective savings or added costs from bidding contractors for items to be considered specifically to reduce costs or enhance value of the project. Review the value engineering options with the Design Team and the Westerly Building Committee to identify those option(s) preferred by the Westerly Building Committee to meet budget, program, or quality expectations to be included in the construction contract.

### 3. Construction Phase

#### a. Coordinating and Reporting

i. Construction Meetings: Participate in pre-construction meetings held with the contractor, architect, and the owner for the Project. Participate in all Construction Progress meetings held with the contractor, architect, and the owner. Review minutes of the weekly progress meetings to ensure all matters of construction are being considered and reported accurately. Ensure a system is in place for tracking the resolution of issues that are identified at such progress meetings.

ii. Owner Meetings: Attend all meetings held by the Westerly Building Committee and act as the liaison with the design/construction professionals.

iii. Monthly Reports: Submit to the Westerly Building Committee and the Architect monthly reports of the progress of the project. Include the current construction schedule with a variance to contract, the current financial status and potential financial exposures and provide details of possible work deficiencies and delays affecting the project.

#### 4. **Schedule Monitoring**

**a. Monitor Construction Schedule:** Review and recommend for approval the base-line construction schedule submitted by the general contractor. Obtain and review, on a regular basis an updated construction schedule from the general contractor. Identify potential variances to the planned completion dates, report variances to the Westerly Building Committee and the Architect.

**b. Update Master Project Schedules:** Update the 'master schedule' for the project based upon the contractor's base line construction schedule. Ensure that key activities such as furniture, tele/data, move in and commissioning are incorporated into the master schedule and coordinated with construction activities. As required, update the Master Project Schedule based upon changes or modifications to the contractor's Construction Schedule.

#### 5. **Financial Monitoring and Control**

**a. Project Financial Reporting:** On an ongoing basis, track and monitor all project related expenditures. Project related expenditures include construction / renovation costs, FF&E, professional fees, project related expenses, and contingency expenditures. The ongoing financial monitoring and reporting shall include a comparison of actual project expenditures and anticipated project expenditures versus the budgeted costs. Project reporting and monitoring shall endeavor to minimize unexpected financial surprises.

**b. Construction Contract Financial Oversight:** Review contractor's requisitions for payment to verify appropriateness and to ensure that Westerly Public Schools' interests are protected. Review partial and final Waivers of Liens and Certified payrolls from suppliers, contractors, subcontractors, and any other entity in connection with the project with the payment requisitions. Review requests for change orders prepared by the general contractor, subcontractors and suppliers. Confirm the legitimacy of the scope of the change order; verify the contractual requirements that may impact the approval of the change order, review the impact on the schedule and verify pricing. Establish and implement program and procedures to ensure timely identification, review, analysis, and resolution of potential claims and/or disputes. Monitor the general contractor's adherence to these procedures.

#### 6. **Construction Supervision and Quality Control**

**a. Construction Inspection:** Conduct regular on-site inspections to monitor the work in progress. Assist Westerly Public Schools in determining if the work is generally proceeding in accordance with the Contract Documents and the Owner's requirements.

**b. System Inspections:** Provide specialized system commissioning inspections to verify that the Mechanical and Electrical systems to identify possible issues that could impact the operations, maintenance and performance of related systems and equipment.

**c. Governmental Approvals:** Assist in obtaining approvals and permits and monitor the status of approvals and permits including the Certificate of Occupancy that are agreed to be the responsibility of the general contractor.

**d. Record Drawings:** Review and evaluate the general contractor's procedure for obtaining/maintaining a current set of record drawings, specifications and operating manuals. Monitor the implementation of such procedures. At the completion of each project, facilitate delivery of all records and as-built documents to Westerly Public Schools and the Architect.

### **7. Occupancy and Close-out**

**a. Commissioning:** Verify the proper performance of the mechanical and electrical systems through the use of a commissioning process. The commissioning process shall include written detailed functional performance tests that demonstrate and document that the desired system performance is achieved. Send correspondence of findings to the Westerly Building Committee and the Architect.

**b. Training of Building Users, Operators and Maintenance Staff:** Coordinate contractor provided training sessions to instruct the various staff and trades people on the operations and maintenance procedures. Provide supplemental training of systems operations as necessary.

**c. Furniture, Fixtures and Equipment (FF&E):** Coordinate the procurement and installation of all Furnishings, Fixtures and Equipment, including data/communications equipment that is outside the scope of the Construction Contract.

**d. Occupant Move In:** Coordinate all moving logistics for building occupants. Develop a detailed schedule for re-location and move-in; establish a process for packing and labeling of moved materials and negotiate, schedule and coordinate move with a moving company and/or the request of Westerly Public Schools.

**e. Closeout of Construction Contract:** Organize, manage, expedite and monitor punch list and project close out issues after substantial completion of a project. Monitor close out requirements and commissioning of building including, but not limited to, guarantees, warranties, as-built drawings, maintenance and procedure manuals for new equipment and ensure sign offs by proper authorities.

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## **III. Selection Process and Qualification Criteria**

### **A. Review of Qualifications:**

The Westerly Building Committee will review the qualifications and fee proposals and may choose to select a shortlist for interviews.

### **B. Selection Criteria:**

The firm's qualifications, proposed personnel qualifications, knowledge of Westerly and the needs facing the schools, anticipated services, and project approach will be the criteria by which the Building Committee will conduct its evaluation:

- Company qualifications and experience with project management, of comparable projects of similar size and scope as this project
- Communications skills with various constituencies including the schools, town and Building Committee
- Proposed staffing plan and project team members' qualifications and experience with project management
- Familiarity with Westerly and the needs of the schools
- Demonstrated ability in providing total project management for specific projects throughout all phases of past projects
- Recommendations of current and previous clients
- Demonstrated ability to develop a total capital budget and specific project budgets, perform reliable project cost estimating, review project cost estimating and determine constructability of plans
- Demonstrated experience in Value Engineering
- Demonstrated ability to work as a member of a team
- Extent of services offered, and depth and extent of overall resources that can be put to use to ensure the success of the project
- Proposals to be a maximum of 25 2-sided 8 ½ x 11 pages (50 total)

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## **IV. Instructions for Submission of Qualifications**

**A. Submission Materials:** Care should be taken by interested firms to submit succinct but informative material. Following is a list of minimum information required:

- **Description of firm:** History and description of the firm, including number of personnel in each discipline and a description of in-house services.
- **Description of proposed services and project approach:** A management plan and detailed task outlining the firm's approach to this project and a plan for working with the owner to ensure a successful project.
- **Organization:** Proposed organization delineating key personnel to be providing services and reporting relationships internally to the Westerly Building Committee.
- **Resumes of key personnel and/or consultants providing proposed services:** Include resumes of principals in the firm and key personnel identified in the organization chart.
- **Similar project experience:** Description of experience with similar project.
- **Insurance:** List all insurance coverage currently carried by the firm including professional liability and general business liability.
- **Litigation:** List any and all lawsuits you have been a party to in the last five years, and the position your firm has taken.
- **Fee:** Indicate fee structure/methodology for calculation of fees.

## **V. MILESTONE SCHEDULE DATES**

The Successful Bidder agrees to perform the described Work in accordance with the following schedule:

Referendum Date: October 8, 2019

Approximate Work Start Date: September 1, 2019

Approximate Work Completion Date: 30 days after school occupancy



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## ATTACHMENT "B"

### Bid Form

***"THIS FORM MUST BE COMPLETED AND SUBMITTED WITH BID"***

RFQ NUMBER: 2019 – 044

RFQ NAME: Project Management / Owner's Representative Services

The Bidder stated below agrees to provide all labor, materials, equipment, supervision and all activities required to provide a complete scope of work as defined in the above referenced Request for Proposal, for the Estimated Sum amount of \_\_\_\_\_

(\$ \_\_\_\_\_)

For the Town/Schools to properly evaluate the Proposals, please supply the following information.

BID BREAKDOWN	Cost
Stage III (Construction Documents)	
Stage IV (Bidding & Construction Administration)	
TOTAL BID PRICE	

Did you completed and submit **Appendix A**: YES \_\_\_\_\_ NO \_\_\_\_\_?

Start: \_\_\_\_\_ calendar days after receipt of order.

### UNIT PRICES

The Bidder submits these predetermined firm Unit Prices as the basis for any change orders as approved in advance by the Town/Schools. These Unit Prices include all costs, including but not limited to labor, materials, services, regulatory compliance, insurance, overhead, and profit. If a specific item or task is not noted in the description, the cost of that item must be included in an item listed below. Note; some items identified may not be referenced in this scope but are listed for potential substitutions and/or for potential items to be used within the allowance budget.

DESCRIPTION	HOURLY	WEEKLY	MONTHLY
1. PROJECT MANAGER			
2. CLERICAL			
3. Mark-up on Special Requests			

The below stated Bidder agrees to provide all labor, materials, equipment, supervision and all activities required to provide a complete scope of work as defined in this Request for Quotation, including, but not limited to, agree to all terms and conditions, all as shown or by reference, unless as excluded below:

**EXCLUSIONS:**

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**NOTE:** Bidders must include in their fees all costs associated with travel expenses, computer equipment costs, cell phone costs, office supplies, such as copy paper, etc.

This Request for Proposal, together with all documents, specifications, drawings and documents/attachments/Addendums, are included and constitute the entire proposal from the bidder. There are no terms, conditions, or provisions, either oral or written, between the parties hereto, other than those contained herein. The Request for Proposal supersedes all written representation, inducements, or understandings of any kind or nature between the parties hereto, relating to the project involved herein. Payment Terms are net 30 days, for this scope of work.

The bid price above, excludes applicable sales and or use taxes; includes all insurance premiums; and includes all shipping/transportation costs, if applicable.  
The submitted pricing for this scope of work shall remain firm for 90 days from date of submission.

## Company Representative

Print Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

_____	_____	_____	_____	_____
Telephone	e-Mail	City	State	Zip

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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## ATTACHMENT "C"

### INSTRUCTIONS TO BIDDERS (FOR CONSTRUCTION/SERVICES)

#### PURCHASING DEPARTMENT

1. **Submission of Bids**

a. Envelopes containing bids **must be** sealed and addressed as indicated on the Invitation to Bid and must be marked with the name and address of bidder, date and bid due time, and name of bid, along with RFQ number.

b. The Purchasing Agent will decide when and if the specified time has arrived to open bids, and no bid received thereafter will be considered. The Purchasing Agent reserves the right to waive any informality in the bidding process.

c. Any bidder may withdraw his/her bid by written request at any time prior to the advertised time for opening. Telephonic bids, amendments, or withdrawals will not be accepted.

d. Negligence on the part of the bidder in preparing the bid confers no rights for the withdrawal of the bid after it has been opened.

e. Proposals received prior to the time of opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a proposal not properly addressed and identified.

f. Any deviation from the Specifications must be noted in writing and attached as part of the bid proposal. The Bidder shall indicate the item or part with the deviation and indicate how the bid will deviate from Specifications.

2. **Prices**

Bidders shall state the proposed price in the manner as designated in the Bid Proposal Form. If there is a discrepancy between the unit prices and the extended totals, the unit prices shall govern. In the event, there is a discrepancy between the price written in words and written in figures, the prices written in words shall govern.

3. **Terms**

Cash discounts offered will be considered in determining awards. The discount period shall be computed from the date of delivery or from the correct invoice as received by Town Treasurer, whichever date is later. The date of delivery shall be construed to mean the date on which bid item is determined to meet the specifications and is therefore acceptable. Discounts for a period less than thirty (30) days may not be considered. Payment terms are net 30.

4. **Qualification of Bidders**

The Town/School's may make such investigations as it deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish the town with all such information and data for the purpose as may be requested.

5. **Addenda and Interpretations**

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No interpretation on the meaning of the Plans, Specifications or any other Contract Document will be made to any bidder orally. Every request for such interpretations must be in writing.

All questions pertaining to the specifications or proposal procedure should be first directed to the Purchasing Agent. Where information from the Purchasing Agent differs from information from any other source, the information from the Purchasing Agent prevails. The Town/School is not responsible for information obtained from any other source. It is the responsibility of the Bidder to check the website for any and all information regarding the request to bid.

### 6. **“Or Equal” Bidding**

When the name of a manufacturer, a brand name, or manufacturer's catalogue number is issued as the bid standard in describing an item followed by “Or Equal” this description is used to indicate quality, performance and other essential characteristics of the article required.

If bidding on other than the make, model, brand or sample specified, but equal thereto, bidder must so state by giving the manufacturer's name, catalogue number and any other information necessary to prove that the intended substitution of a commodity is equal in all essential respects to the bid standard. Bidder must prove to the satisfaction of the Town of Westerly/Westerly Schools or by person or persons designated by him, that his/her designated substitute is equal to the bid standard: otherwise, his/her bid will be declared “No Bid” insofar as the item in question is concerned.

### 7. **Award and Contract**

Unless otherwise specified, the Town of Westerly/Westerly Schools reserves the right to make award by item or items, or by total, as may be in the best interest of the Town; accept a proposal based on considerations other than costs; and waive and modify any provisions of the request for proposal.

A written award (or acceptance of Bid) mailed (or otherwise furnished) to the successful bidder followed by an authorized Contract shall, unless otherwise specified, be deemed to result in a binding contract without further action by either party. The Bidder is responsible for all costs and expenses to develop and submit a proposal in response to the solicitation.

### 8. **Equal Employment Opportunity Policy Statement**

For the purposes of this Policy, the term “vendor” shall mean any and all individuals, companies, corporations, and business entities that provide goods or services to the Town of Westerly/Westerly Schools pursuant to any and all relevant and appropriate Federal, State, and local purchasing rules, regulations, and procedures.

The Town of Westerly/Westerly Schools is committed to the general policy and principle of Equal Employment Opportunity in terms of retaining vendors to provide the Town/Schools with goods and services necessary for routine and emergency operations. The Town of Westerly/Westerly Schools will not discriminate against vendors as entities, or individual employees thereof on any legally-recognized basis included, but not limited to, race, age, color, religion, sex, marital status, national origin, physical or mental disability, Veteran's status, pregnancy, sexual orientation, genetic conditions, predisposition to certain diseases, or ancestry, except where a bona fide occupational qualification exists.

### 9. **Standard Insurance and Indemnification Requirements (for Construction/Labor Services)**

General Conditions: Within ten (10) business days of the award or notice, or prior to the start of work, whichever comes first, the contractor will provide, pay for, and maintain in full force and affect the insurance outlined here for coverage's at not less than the prescribed minimum limits of liability. Such coverage is to remain in force during the life of the contract and for such additional time as may be required, and will cover the contractor's activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- A. Certificates of Insurance: The contractor will give the owner a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage's required

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here are in effect and specifying that the liability coverage's are written on an occurrence form and that the coverage's will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice to: Town of Westerly, 45 Broad Street, Westerly, Rhode Island, 02891 Attn: Purchasing Agent. Failure of the owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the owner to identify a deficiency from evidence provided will not be construed as a waiver of the contractor's obligation to maintain such insurance.

- B. Insurer Qualification: All insurance will be provided through companies authorized to do business in the State of Rhode Island and considered acceptable by the owner, with an A.M. Best Rating of A-/VIII.
- C. Additional Insured: To the extent commercially available at no additional cost, the policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include the owner and owner's architects, directors, officers, representatives, agents, and employees as additional insureds on a primary basis for work performed under or incidental to this contract.
- D. Retroactive Date and Extended Reporting Period: If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.
- E. Subcontractors' Insurance: The contractor will cause each subcontractor employed by contractor to purchase and maintain insurance of the types specified below. When requested by the owner, the contractor will furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- F. Waiver of Subrogation: The contractor will require all insurance policies in any way related to the work and secured and maintained by the contractor to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against owner, architect, and all tiers of contractors or consultants engaged by them. The contractor will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
- G. Indemnification/Hold Harmless: The contractor shall indemnify, defend, and hold harmless the owner and, if applicable, the engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees of counsel selected by the owner, arising out of or resulting from the performance of the work and /or the supplying of materials, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder.

### II. Insurance Limits and Coverage:

- A. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverages of Insurance Services Office (ISO) policies, forms, and endorsements.
- B. If the contractor has self-insured retention's or deductibles under any of the following minimum required coverage's, the contractor must identify on the certificate of insurance the nature and amount of such self-insured retention's or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retention's or deductibles will be the contractor's sole responsibility.
- C. Commercial General Liability: The contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits:

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Minimum Limits:     \$1,000,000 each occurrence  
                             \$2,000,000 each occurrence if blasting is required  
                             \$2,000,000 general aggregate with dedicated limits per project site  
                             \$2,000,000 products and completed operations aggregate  
                             \$1,000,000 personal and advertising injury

Should blasting be required, all necessary permits for the use of explosives shall be obtained by the contractor or insured from the Fire Marshall.

Special hazards shall be covered if needed by endorsement to the Commercial Liability policy/policies as follows:

- 1) Property damage liability arising out of the collapse of or structural injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or to moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- 2) Property damage liability for injury to or destruction of property arising, directly or indirectly, from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 3) Property damage liability for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting therefrom.

- D. Automobile Liability: The contractor will maintain business auto liability coverage for liability arising out of any auto, including owned, hired, and non-owned autos.

Minimum Limits:     \$1,000,000 combined single limit each accident

- E. Workers' Compensation: The contractor will maintain workers' compensation and employer's liability insurance. Waiver of subrogation in favor of the Town of Westerly shall apply.

Minimum Limits:     Workers' Compensation: statutory limit  
Employer's Liability: \$500,000 bodily injury for each accident  
                             \$500,000 bodily injury by disease for each employee  
                             \$500,000 bodily injury disease aggregate

- F. Umbrella/Excess Liability: The contractor will maintain coverage applying over the underlying Commercial General Liability, Automobile Liability, Pollution Liability (where applicable), and Employer Liability section of the Workers Compensation coverage. **The Town of Westerly shall have the sole discretion in increasing or reducing the Umbrella/Excess Liability coverage requirements depending on the scope and/or size of the work to be performed by Contractor/Bidder.**

Minimum Limits:     \$5,000,000 per occurrence/\$5,000,000 annual aggregate

Coverage applies over the underlying Commercial General Liability, Automobile Liability, pollution liability (where applicable), and Employer Liability section of the Workers Compensation Coverage.

- G. Professional Liability (**for consultants, engineers, and other individuals/businesses providing professional services**)

Each Claim/Wrongful Act:	\$1,000,000
Annual Aggregate	\$1,000,000

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Town of Westerly/Westerly Schools reserves the right to amend amounts of coverage required and type of coverages provided based on work or service to be performed.

## **10. Labor Regulations**

The following paragraphs regarding nondiscrimination in employment shall be included and become part of these Specifications:

- A. The Contract for Work under this proposal will obligate the contractor and subcontractors not to discriminate in employment practices and conform with Executive Order No. 11246.
- B. Bidders must, if required, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive award of the Contract.
- C. Successful bidders must, if required, submit a list of all subcontractors who will perform Work on the Project, and written signed statements from authorized agents of labor pools with which they will or may deal with for employees on the Work, together with any information to the effect that such labor pools practices or policies are in conformity with Executive Order No. 11246; that they will affirmatively cooperate in or offer no hindrance to the recruitment, employment, and equal treatment of employment, and equal treatment of employees seeking employment and performing Work under this Contract; or a certification as to when such agents or labor pools have failed or refused to furnish them, prior to award of the Contract.

## **11. Wage Rates (for on-site construction labor services)**

**Attention of the bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the Contract. In conformity with the provisions of Chapter 13 of Title 37, General Laws, Rhode Island, 1956, as amended, the minimum wages for a day's work paid to craftsmen, teamsters and laborers shall be not less than the customary and prevailing rate of wages for a day's work in the locality where the work is undertaken. Such a schedule of wages has been established on a minimum hourly basis and is in file in the office of the State Department of Labor. See Appendix B.**

## **12. Compliance with Instructions to Bidders**

These Instructions to Bidders contain terms and conditions that will govern the preparation and submission of a bid proposal and any contract awarded pursuant to this solicitation. Bidders must comply with each and every requirement of these Instructions to Bidders. Any failure to comply with any requirement may result in the determination of nonresponsive bid proposal and/or the rejection of the bid proposal.

## **13. Priority of Terms and Conditions**

The terms and conditions in these Instructions to Bidders *supersede* any and all inconsistent or conflicting terms and conditions in any other provision of any other document in this solicitation or in the bid proposal and govern this solicitation, the bid proposal, and any contract awarded pursuant to this solicitation.

## **14. Public Copy**

Bid proposals submitted in response to this solicitation are public records pursuant to the Rhode Island "Access to Public Records Act," R. I. Gen. Laws §§ 38-2-1 *et seq.* Each bid proposal must include a "public copy" to be available for public inspection upon the opening of bids. The public copy must be submitted in .pdf (portable document file) format on a **read-only** CD-R media disk or Flash Drive. The disk must include **all the documents** submitted in response to the solicitation concatenated or merged into one file.

# TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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The public copy disk must be separately enclosed in a protective cover clearly marked "Public Copy" and include the following information: (1) Solicitation Title; (2) name of bidder; (3) Solicitation Number; and (4) bid proposal submission deadline.

The .pdf file must be named in the following manner:

Solicitation Number Bid Proposal Submission Deadline\_BidderName.pdf

Bidders may redact in the public copy any trade secrets or commercial or financial information which is of a privileged or confidential nature pursuant to the Access to Public Records Act. If a "hard" public copy is furnished at time of bid, the bidder may follow up with the disk copy before the end of the business Bid Due Date day. Bids may be opened publicly in Town Hall or Babcock School shortly after Bid receipt.

## **15. Binding Contract**

A binding contract between the Town of Westerly/Westerly Schools and the successful bidder will be formed by the issuance of the Westerly Standard Agreement from the Purchasing Department, *and only by the issuance of a Purchase Order for billing purposes, and only to the extent of available funds.* The binding contract will incorporate and be subject to the terms and conditions of the solicitation, including the Invitation to Bid, the Instructions to Bidders, the Request for Quote, the Bidder Certification Form, the Agreement (if applicable to this solicitation), and the Purchase Order. The successful bidder shall be authorized to commence work only upon the issuance of the Notice to Proceed or Contract and, in addition, an authorization from the department.

## **16. DISCLAIMER**

- a. The Town reserves the right to amend, cancel or withdraw the Request for Proposal at any time if it is deemed in the best interests of the Town to do so. The Town reserves the right to reject any, or any part of, or all proposals, to waive informalities and technicalities, and to accept that bid proposal which the Town deems to be in the best interest of the Town, whether or not it is the lowest dollar bid.
- b. The Town is not responsible for any costs/expenses incurred by anyone submitting a proposal for this project. Costs/expenses are the sole responsibility of the parties submitting proposals.
- c. All proposals submitted, and information included therein or attached thereto shall become public records upon their delivery to the Town. All documents created by the respondent during the completion of their contract requirements shall become the property of the Town, including any databases and information systems that are created.
- d. The information contained in this RFQ and attachments, hereto, and any addendum that may be issued, are provided to assist prospective Bidders in the preparation of proposals. The information has been obtained from sources thought to be reliable, but the Town and its elected officials, officers, employees, agents and contractors, are not liable for the accuracy of the information or its use by prospective Bidders.

## **17. Background Investigation Check for Construction Contractors and Sub-Contractors**

Prior to the start of work on any Westerly Public Schools site, all construction contractors and other vendors supporting construction projects including but not limited to construction managers, company owners, architects, engineers, specialty contractors, subcontractors and personnel for the same shall be subject to national and state criminal background checks to determine suitability for performing work at a Westerly Public Schools site. No personnel



## TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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shall work at a Westerly Public Schools construction site that has been identified as a sexual predator, convicted of a serious offense or convicted of a crime in the last three years.

The contractor or vendors supporting construction projects shall screen all personnel on the national and state level and/or other appropriate sexual predator database. Contractors and sub-contractors must conduct a sexual predator screening of all personnel. All personnel are required to wear badges with a picture, employees name and name of contractor.

Contractors and other vendors supporting construction projects shall be required to complete the background check and to pay the processing and maintenance fee required for all the appropriate background checks. **Contractors should not expect these background checks to be completed by the Westerly Police Department.** Failure to meet policy requirements may result in a stop work order and/or revocation of the contract.

**Dated 2/21/19**

# TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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## **Appendix A** **Bidder Certification Form**

ALL OFFERS ARE SUBJECT TO THE REQUIREMENTS, PROVISIONS AND PROCEDURES CONTAINED IN THIS CERTIFICATION FORM. Offerors are expected to read, sign and comply with all requirements. Failure to do so may be grounds for disqualification of the offer contained herein.

### **Rules for Submitting Offers**

This Certification Form must be attached in its entirety to the front of the offer and shall be considered an integral part of each offer made by a vendor to enter a contract with the Town of Westerly/Westerly Schools. As such, submittal of the entire Bidder Certification Form, signed by a duly authorized representative of the offeror attesting that he/she (1) has read and agrees to comply with the requirements set forth herein and (2) to the accuracy of the information provided and the offer extended, is a mandatory part of any contract award.

To assure that offers are considered on time, each offer must be submitted with the specific Bid/RFP/RFQ number, date and time of opening marked in the upper left hand corner of the envelope. Each bid/offer must be submitted in separate sealed envelopes. A complete signed (in ink) offer package must be delivered to the Town of Westerly/Westerly Public Schools Purchasing Agent at the location indicated within the bid by the time/date specified for the opening of responses in a sealed envelope.

Bids must be submitted on the bid solicitation forms provided, indicating brand and part numbers of items offered, as appropriate. Bidders must submit detailed cuts and specs on items offered as equivalent to brands requested WITH THE OFFER. Bidders must be able to submit samples if requested.

Documents misdirected to other Town locations or which are not present in the Town of Westerly/Westerly Public Schools Purchasing Office at the time of opening for whatever cause will be deemed to be late and will not be considered. Postmarks shall not be considered proof of timely submission. The Town of Westerly/Westerly Schools reserves the right to reject any and all proposals, to waive any informality in the proposals received and to accept the proposal deemed to be most favorable to the best interests of the Town/Schools.

**SOLICITATIONS.** To assure maximum access opportunities for users, public bid/RFP solicitations shall be posted on the website for a minimum of seven days and no amendments shall be made within the last five days before the date an offer is due. Except when access to the website has been severely curtailed and it is determined by the Purchasing Agent that special circumstances preclude extending a solicitation due date, requests to mail or fax hard copies of solicitations will not be honored. When the result of an internet solicitation is unsuccessful, the Town of Westerly/Westerly Public Schools will cancel the original solicitation and re-solicit the original offer directly from vendors.

**PRICING.** Offers are irrevocable for ninety (90) days from the opening date (or such other extended period set forth in the solicitation), and may not be withdrawn, except with the express permission of the Purchasing Agent. All pricing will be firm and fixed unless otherwise indicated. (R.I. Sales Tax under the 1956 General Laws of the State of RI, 44-18-30 Para1, as amended.) The Town of Westerly/Westerly Public Schools is exempt from Federal excise taxes and State Sales and Use Taxes. Such taxes shall not be included in the bid price.

**DELIVERY and PRODUCT QUALITY.** All offers must define delivery dates for all items; if no delivery date is specified, it is assumed that immediate delivery from stock will be made. The contractor will be responsible for delivery of materials in first class condition. Rejected materials will be at the vendor's expense. **PRICES QUOTED ARE FOB DESTINATION.** No additional shipping, handling, or fuel surcharge costs will be honored by the Town/School. Only inside delivery and set-up, where required, will be accepted. **TAILGATE DELIVERIES WILL BE REFUSED.** Deliveries must consist only of new merchandise or equipment (unless otherwise specified) and shall be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. No delivery shall become due or be acceptable without an authorized Purchase Order issued by the Purchasing Agent.

**PREVAILING WAGE, OSHA SAFETY TRAINING and APPRENTICESHIP REQUIREMENTS.** Bidders must comply with the provisions of the Rhode Island labor laws, including R.I. Gen. Laws §§ 37-13-1 et seq. and occupational safety laws, including R.I. Gen. Laws §§ 28-20-1 et seq. These laws mandate *for* public works

## **TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS**

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construction projects the payment of prevailing wage rates, the implementation and maintenance of occupational safety standards, and for projects with a minimum value of \$1 Million, the employment of apprentices. The successful Bidder must submit certifications of compliance with these laws from each of its subcontractors prior to their commencement of any work. Prevailing wage rates, apprenticeship requirements, and other workforce and safety regulations are accessible at [www.dlt.ri.gov](http://www.dlt.ri.gov).

**PUBLIC RECORDS.** Offerors are advised that all materials submitted to the Town of Westerly/Schools for consideration in response to this solicitation will be considered without exception to be Public Records pursuant to Title 38 Chapter 2 of the Rhode Island General laws, and will be released for inspection immediately upon request once an award has been made. Offerors are encouraged to attend public bid/RFP openings to obtain Information; however, bid/RFP response summaries may be reviewed after award(s) have been made by visiting [www.westerlyri.gov](http://www.westerlyri.gov) or appearing in person at Westerly Town Hall, Purchasing Office, Mondays through Fridays between 8:30am-3:30pm. Telephone requests for results will not be honored. Written requests for results will only be honored if the information is not available on the website.

Award will be made to the responsive and responsible offeror quoting the lowest net price in accordance with specifications, for any individual item(s), for major groupings of items, or for all items listed, at the Town's sole option.

**BID SURETY.** Where bid surety is required, for construction/labor services, bidder must furnish a bid bond or certified check for 5% of the bid total with the bid, or for such other amount as may be specified. Bids submitted without a required bid surety will not be considered. Contractor awarded a contract with a contract price in excess of fifty thousand dollars (\$50,000) for construction, buildings or public works is to file with the proper authority good and sufficient bond with surety furnished by any surety company authorized to do business in the State of Rhode Island and in accordance with Chapter 13 of the General Laws of Rhode Island entitled "Labor and Payment of Debts by Contractors".

**SPECIFICATIONS.** Unless specified "no substitute", product offerings equivalent in quality and performance will be considered (at the sole option of the Town/School) on the condition that the offer is accompanied by detailed product specifications. Offers which fail to include alternate specifications may be deemed nonresponsive.

**VENDOR AUTHORIZATION TO PROCEED.** When a purchase order, change order, contract/agreement or contract/agreement amendment is issued by the Town of Westerly/Westerly Public Schools, no claim for payment for services rendered or goods delivered contrary to or more than the contract terms and scope shall be considered valid unless the vendor has obtained a written change order or contract amendment issued by the Town/Schools PRIOR to delivery.

Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order OR pricing agreement made in writing by the Town's Purchasing Department, shall be considered a binding contract.

**GENERAL TERMS AND CONDITIONS OF CONTRACTS.** This solicitation and any contract or purchase order arising from it are issued in accordance with the specific requirements described herein, and the State's Purchasing Laws and Regulations and other applicable State Laws. The General Terms and Conditions are incorporated into all the Town of Westerly/Westerly Public Schools contracts.

**ARRA SUPPLEMENTAL TERMS AND CONDITIONS.** Contracts and sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto, such contracts and sub-awards shall be subject to the Supplemental Terms and Conditions for Contracts and Sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5 and any amendments thereto located on the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

**EQUAL EMPLOYMENT OPPORTUNITY.** Compliance certificate and agreement procedures will apply to all awards for supplies or services valued at \$10,000 or more. Minority Business Enterprise policies and procedures, including subcontracting opportunities as described in Title 37 Chapter 14.1 of the Rhode Island General Laws also apply.

**PERFORMANCE BONDS.** Where indicated, successful bidder must furnish a 100% performance bond and labor and payment bond for contracts subject to Title 37 Chapters 12 and 13 of the Rhode Island General Laws. All bonds must be furnished by a surety company authorized to conduct business in the State of Rhode Island. Performance bonds must be submitted within 21 calendar days of the notice of award.

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DEFAULT and NON-COMPLIANCE Default and/or non-compliance with the requirements and any other aspects of the award may result in withholding of payment(s), contract termination, debarment, suspension, or any other remedy necessary that is in the best interest of the Town of Westerly.

COMPLIANCE Vendor must comply with all applicable federal, state and local laws, regulations and ordinances

SPRINKLER IMPAIRMENT AND HOT WORK. The Contractor agrees to comply with the practices of the Town/Town's Insurance carrier for sprinkler impairment and hot work. Prior to performing any work, the Contractor shall obtain the necessary information for compliance from the Risk Management Office at the Department of Administration or the Risk Manager at the Town of Westerly.

PUBLIC COPY. Each bid proposal for a *public works project* must include a "public copy" to be available for public inspection upon the opening of bids. Bid Proposals that do not include a copy for public inspection will be deemed nonresponsive.

For further information on how to comply with this statutory requirement, see R.I. Gen. Laws §§ 37-2-18(b) and (j). Also see State of Rhode Island Procurement Regulation 5.11 at <http://www.purchasing.ri.gov/rulesandregulations/rulesAndRegulations.aspx>

### ALL CONTRACT AWARDS ARE SUBJECT TO THE FOLLOWING DISCLOSURES & CERTIFICATIONS

**Offerors must respond to every disclosure statement and submit with your proposal.** A person authorized to enter into contracts must sign the offer and attest to the accuracy of all statements.

Indicate Yes (Y) or No (N):

\_\_\_ 1 State whether your company, or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has been subject to suspension or debarment by any federal, state, or municipal government agency, or the subject of criminal prosecution, or convicted of a criminal offense with the previous five (5) years. If so, then provide details below.

\_\_\_ 2 State whether your company, or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has had any contracts with a federal, state or municipal government agency terminated for any reason within the previous five (5) years. If so, then provide details below.

\_\_\_ 3 State whether your company or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has been fined more than \$5000 for violation(s) of Rhode Island environmental laws by the Rhode Island Department of Environmental Management within the previous five (5) years. If so, then provide details below.

\_\_\_ 4 I/we certify that I/ we will immediately disclose, in writing, to the Purchasing Agent any potential conflict of interest which may occur during the course of the engagement authorized pursuant to this contract.

\_\_\_ 5 I/we acknowledge that, in accordance with (1) Chapter §37-2-54(c) of the Rhode Island General Laws "no purchase or contract shall be binding on the state or any agency thereof unless approved by the Department of Administration or made under general regulations which the Purchasing Agent may prescribe", including change orders and other types of contracts and under State Purchasing Regulation 8.2.1.1.2 any alleged oral agreement or arrangements made by a bidder or contractor with any department or an employee of the Town of Westerly may be disregarded and shall not be binding on the Town of Westerly.

\_\_\_ 6 I/we certify that I or my/our firm possesses all licenses required by Federal and State laws and regulations as they pertain to the requirements of the solicitation and offer made herein and shall maintain such required license(s) during the entire course of the contract resulting from the offer contained herein and, should my/our license lapse or be suspended, I/we shall immediately inform the Town of Westerly Purchasing Agent in writing of such circumstance.

\_\_\_ 7 I/we certify that I/ we will maintain required insurance during the entire course of the contract resulting from the offer contained herein and, should my/our insurance lapse or be suspended, I/we shall immediately inform the Town of Westerly Purchasing Agent in writing of such circumstance.

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\_\_\_ 8 I/we certify that I/we understand that falsification of any information herein or failure to notify the Town of Westerly Purchasing Agent as certified herein may be grounds for suspension, debarment and/or prosecution for fraud.

\_\_\_ 9 I/we acknowledge that the provisions and procedures set forth in this form apply to any contract arising from this offer.

\_\_\_ 10 I/we acknowledge that I/we understand the State's Purchasing Laws (§37-2 of the General Laws of Rhode Island) and General Terms and Conditions available at the Rhode Island Division of Purchases Website (<http://www.purchasing.ri.gov>) apply as the governing conditions for any contract or purchase order I/we may receive from the Town of Westerly, including the offer contained herein.

\_\_\_ 11 I/we certify that the bidder: (i) is not identified on the General Treasurer's list, created pursuant to R.I. Gen. laws§ 37-2.5-3, as a person or entity engaging in investment activities in Iran described in§ 37-2.5-2(b); and (ii) is not engaging in any such investment activities in Iran.

\_\_\_ 12 If the product is subject to Department of Commerce Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), please provide the Export Control Classification Number (ECCN) or the US Munitions List (USML) Category: \_\_\_\_\_

\_\_\_ 13 I/we certify that the above information is correct and complete.

IF YOU HAVE ANSWERED "YES" TO QUESTIONS #1- 3 OR IF YOU ARE UNABLE TO CERTIFY YES TO QUESTIONS #4 -11 and 13 OF THE FOREGOING, PROVIDE DETAILS/EXPLANATION IN AN ATTACHED STATEMENT. INCOMPLETE CERTIFICATION FORMS SHALL BE GROUNDS FOR DISQUALIFICATION OF OFFER.

Signature below commits vendor to the attached offer and certifies (1) that the offer has taken into account all solicitation amendments, (2) that the above statements and information are accurate and that vendor understands and has complied with the requirements set forth herein.

Vendor's Signature: \_\_\_\_\_ Bid Number: \_\_\_\_\_ Date: \_\_\_\_\_  
(Person Authorized to enter into contracts; signature must be in ink) (if applicable)

Print Name and Title of Company official signing offer Telephone Number

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# **TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS**

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## **TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS PROFESSIONAL SERVICES/CONSULTING AGREEMENT**

**Contract/PO Number:**

**Resolution Number (if applicable):**

THIS CONSULTING AGREEMENT, made effective as of the            day of            20             
by and between **TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**. (the "TOWN/SCHOOLS") and  
(the "Consultant").

1.     **Engagement.** THE TOWN/SCHOOLS hereby engage the Consultant as a consultant to perform the Services (as defined herein) subject to the terms and conditions of this Agreement, and the Consultant hereby accepts such engagement for and in consideration of the compensation hereinafter provided. The Consultant shall perform its obligations hereunder in compliance with the terms of this Agreement and any and all applicable laws and regulations. The Consultant acknowledges that THE TOWN/SCHOOLS retains the right to appoint additional consultants as THE TOWN/SCHOOLS, in its sole and unrestricted judgment, may from time to time determine to be in the best interests of THE TOWN/SCHOOLS without liability or obligation to the Consultant. THE TOWN/SCHOOLS make no representation or warranty as to the aggregate compensation payable hereunder or the number or scope of projects for which it may engage the Consultant.

2.     **Services.**

a.     **Statements of Work.** The Consultant agrees to render services and prepare such deliverables as described in the numbered statements of work executed under this Agreement (each, a "Statement of Work"). Each Statement of Work constitutes a separate and independent contract of the Consultant which incorporates the terms and conditions of this Agreement. The tasks to be performed and the deliveries to be made by the Consultant pursuant to each Statement of Work are hereinafter collectively referred to as the "Services." The Consultant shall advise THE TOWN/SCHOOLS in writing which of its employees will be responsible for the provision of the Services subject to the approval of THE TOWN/SCHOOLS, which approval shall not be withheld unreasonably (the "Designees"). The Services shall be performed in accordance with the time schedule indicated in the respective Statement of Work. Time is of the essence in the performance of this Agreement and the Services hereunder.

b.     **Benefits.** The Consultant shall be responsible for all employee benefits and compensation and employment taxes with respect to its employees and agents. The Consultant shall indemnify, defend and hold harmless THE TOWN/SCHOOLS and its affiliates, directors, officers, employees, agents and representatives and assigns of each, from and against all claims, suits, liabilities, costs and expenses arising under the preceding sentence, including, without limitation, attorneys' fees and expenses, assessments for withholding and similar taxes, claims for benefits and any similar claims by or with respect to such employees. In no event, shall an employee or agent of the Consultant be considered an employee or agent of THE TOWN/SCHOOLS. Consultant agrees that in the event Consultant or Consultant's employees is {are} classified as an "employee(s)" by any governing authority, and THE TOWN/SCHOOLS becomes liable for any payments for insurance, penalties, or other charges, Consultant shall reimburse THE TOWN/SCHOOLS for any and all amounts charged against THE TOWN/SCHOOLS. The provisions of this Section 2(b) shall survive any termination of this Agreement.

c.     **Licenses.** The Consultant is responsible for obtaining all licenses, certifications, registrations and authorizations necessary or advisable for the performance of the Services.

3.     **Compensation.** As compensation for the performance of the Services, THE TOWN/SCHOOLS shall pay to the Consultant the amounts ("Fee") specified in the applicable Statement of Work. The Consultant will be responsible for all travel and other business related expenses within the Greater Southern New England Area. Outside this area travel and business related expenses will be reimbursed by THE TOWN/SCHOOLS only upon prior written authorization by THE TOWN/SCHOOLS. Any such reimbursable expenses shall conform to the limitations, guidelines, reporting and approval procedures imposed by THE TOWN/SCHOOLS upon its employees. Unless otherwise provided herein, all federal, state and local taxes, the cost of all required permits, licenses, registrations, certifications and other fees applicable to

## TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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the performance of Services by Consultant, its subcontractors, if allowed, and each Consultant employee are included in the Fee. THE TOWN/SCHOOLS shall pay Consultant the Fee in the manner provided in the Statement of Work.

4. **Term.** The term of this Agreement shall commence on the date hereof and shall continue for a period of \_\_\_\_\_ years. Notwithstanding the foregoing, this Agreement may be terminated (i) by either party at its convenience upon thirty (30) days written notice ("Early Termination") and (ii) by the non-defaulting party upon a breach or default of any material provision or obligation hereunder by, or upon the occurrence of an Insolvency Event with respect to, the other party, provided the party terminating this Agreement has, other than in connection with an Insolvency Event, first given the defaulting party 30 days written notice of such default or breach and such default or breach has not been remedied during such period to the reasonable satisfaction of the non-defaulting party ("Default Termination"). "Insolvency Event" shall mean the insolvency or general failure of a party to pay its debts as they become due; entrance of a party into receivership or any arrangement with creditors generally; filing of a voluntary or involuntary petition or other action or proceeding for bankruptcy or reorganization or dissolution or winding-up; a general assignment for the benefit of creditors; or a foreclosure or sale of a material part of a party's assets by or for the benefit of any creditor or governmental agency.

5. **Limitations.** In recognition of the Consultant's acknowledgment that the Services to be rendered to THE TOWN/SCHOOLS pursuant to this Agreement are of a special and unusual character which have a unique value to THE TOWN/SCHOOLS, loss of which cannot adequately be compensated by damages in any action at law; in view of the unique value to THE TOWN/SCHOOLS of the Services for which THE TOWN/SCHOOLS has engaged the Consultant and the confidential information to be obtained by or disclosed to the Consultant; and as a material inducement to THE TOWN/SCHOOLS to engage the Consultant, and to pay to the Consultant the compensation for such Services to be rendered to THE TOWN/SCHOOLS by the Consultant (it being understood and agreed by the parties hereto that all of the compensation paid to the Consultant in connection with this Agreement by THE TOWN/SCHOOLS shall also be paid and received in consideration hereof), Consultant covenants and agrees as follows:

a. **No Representation.** Consultant is not authorized and shall neither purport to act nor hold itself out as an agent, representative or partner of THE TOWN/SCHOOLS. Nothing in this Agreement shall be construed to give the Consultant authority to represent or act on behalf of THE TOWN/SCHOOLS in any manner with or before any person, party, court or governmental or regulatory agency without the express prior written authorization of THE TOWN/SCHOOLS.

b. **Records and Ownership.** All files, books, accounts, records, documents, notes, drawings, designs, lists, specifications, computer programs, data and other materials and information of any nature or copies of the foregoing, however recorded or stored, and related to THE TOWN/SCHOOLS (the "Records") shall at times belong to THE TOWN/SCHOOLS and to the extent possessed by the Consultant hereunder, such possession shall be for the benefit of and as custodian for THE TOWN/SCHOOLS. The Consultant's possession of the Records is at the will of THE TOWN/SCHOOLS and is solely for enabling the Consultant to perform its obligations hereunder. The Records shall be readily separable from the records of the Consultant. All Records furnished to Consultant by THE TOWN/SCHOOLS, shall remain the property of THE TOWN/SCHOOLS and shall be returned promptly upon completion of the Services, or at any time upon written request of THE TOWN/SCHOOLS. Consultant further agrees not to make any copies of any such written materials other than as necessary to accomplish the Services, all of which shall be returned as provided above.

c. **Reasonableness of Restrictions.** The Consultant has carefully read and considered the provisions of this Section 5 and, having done so, agrees that the restrictions set forth in such Section 5 (including, but not limited to, the time period of restriction and the nature of restriction are fair and reasonable and are reasonably required for the protection of the interests of THE TOWN/SCHOOLS.

d. **Injunction.** In the event of a breach or threatened breach by the Consultant of the provisions of this Agreement, THE TOWN/SCHOOLS shall, in addition to any other rights and remedies available to it, at law or otherwise, be entitled to an injunction to be issued by any court of competent jurisdiction enjoining and restraining the Consultant from committing any present violation or future violation of this Agreement.

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e. **Application.** If required by THE TOWN/SCHOOLS, prior to commencing work under any Statement of Work, the Consultant shall cause each Designee to agree in writing to be bound by the provisions of this Section 5. The Consultant shall indemnify, defend and hold harmless THE TOWN/SCHOOLS and its affiliates, directors, officers, stockholders, employees, agents and customers and the personal representatives and assigns of each, from and against all losses, costs, expenses (including attorney's fees and expenses) occasioned by any breach of any provision of this Section 5 by any Designee, including without limitation, the type described in the second sentence of Sections 5(c) and 5(f) above.

f. **Survival.** The provisions of this Section 5 shall survive the termination of this Agreement.

6. **Insurance.** Consultant shall provide and maintain the insurance coverages required by Exhibit A, attached hereto and incorporated herein. Contractor shall agree to all terms and conditions in Exhibit A.

7. **Notices.** All notices, demands, requests or other communications which may be or are required to be given, served or sent by one party to the other party pursuant to this Agreement shall be in writing and shall be hand delivered (by prepaid courier) or mailed by certified mail, return receipt requested, postage prepaid, or sent by telefax, addressed as follows:

*If to THE TOWN/SCHOOLS:*

TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS.  
45 BROAD STREET  
WESTERLY, RI 02891  
Attention: MARK BEDNARSKI

*If to the Consultant:*

Name:  
Employee:  
Street Address:  
City, State, ZIP:  
Federal ID Number:

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be delivered, given or sent. Documents delivered by hand shall be deemed to have been received upon delivery; documents sent by telefax shall be deemed to have been received when the answer back is received; and documents sent by mail shall be deemed to have been received upon their receipt, or when delivery is refused by the addressee upon presentation.

8. **Security.** The Consultant agrees that it and its personnel will at all times comply with all security regulations in effect from time to time at THE TOWN/SCHOOLS' premises or applicable outside such premises, to materials belonging to THE TOWN/SCHOOLS.

9. **Independent Consultant.** The Consultant shall perform Services hereunder only as an independent contractor. Under no circumstances shall the Consultant or any of its employees or agents be construed to be an employee, partner or agent of THE TOWN/SCHOOLS and neither the Consultant nor any of its employees or agents shall be entitled to participate in THE TOWN/SCHOOLS' profit sharing, pension, bonus or other plans for the benefit of THE TOWN/SCHOOLS employees.

10. **Assignment.** Neither this Agreement or any interest herein or any rights hereunder shall be sold or assigned by the Consultant, nor shall any of the duties of the Consultant hereunder be delegated to any person, firm or corporation, without prior notice to and written consent of THE TOWN/SCHOOLS. For purposes of this provision, assignment shall be deemed to include any change of control or transfer by operation of law.

11. **Standard of Care.** The Consultant hereby represents and affirms to THE TOWN/SCHOOLS that the Consultant and each Consultant employee or subcontractor, if allowed, possess the knowledge, ability, professional skills, qualifications and expertise necessary to perform the Services in accordance with the terms



## **TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS**

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hereof. Upon request, the Consultant will furnish to THE TOWN/SCHOOLS reasonable evidence of the professional qualifications and experience of each Consultant employee supplied pursuant to this Agreement. It is expressly agreed by the Consultant that the initiation and continuation of this Agreement shall be contingent upon Consultant's continuing satisfaction of the requirements of this section. The Consultant represents and affirms that it will exercise due diligence to perform the Services in accordance with the highest professional standards applicable to such or similar Services and in compliance with all applicable laws and regulations and the highest ethical standards. Any Services which do not meet these standards shall be reperformed by the Consultant without cost to THE TOWN/SCHOOLS until it meets THE TOWN/SCHOOLS' reasonable satisfaction. No cost or allowance incurred by Consultant in the performance of such rework shall be reimbursable hereunder. In addition, the Consultant represents and warrants that any information which it may supply THE TOWN/SCHOOLS during the term of this Agreement (i) will have been obtained by the Consultant lawfully and (ii) will not be confidential or proprietary to any third person except for information related to customers of THE TOWN/SCHOOLS which was learned in the course of the performance of the Services and is disclosed to THE TOWN/SCHOOLS in connection therewith. Nothing in this Agreement shall be construed as authorizing or encouraging the Consultant to obtain information for THE TOWN/SCHOOLS in violation of any third party's rights to copyright or trade secret protection.

### **12. Adherence To Laws and THE TOWN/SCHOOLS Policies.**

a. **Illegal Acts.** Consultant agrees that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulations in effect in either the United States or foreign country if applicable; or (ii) would have the effect of causing Company to be in violation of any laws, decrees, rules, or regulations in effect in either the United States or foreign country if applicable.

b. **Payments.** Consultant agrees that in connection with this Agreement or with any resultant contract, it will not, directly or indirectly, give, offer, or promise, or authorize to tolerate to be given, offered, or promised, anything of value to any official, entity, or employee with the intent to (i) influence any act or decision of such official, entity, or employee, or (ii) induce such official, entity, or employee to use his influence to affect or influence any act or decision of any individual or entity in order to assist THE TOWN/SCHOOLS in obtaining or retaining business, or in directing business to any person.

c. **Notice.** Consultant agrees to notify THE TOWN/SCHOOLS immediately of any extortive solicitation, demand, or other request for anything of value, by or on behalf of any official, entity, or employee relating to the subject matter of this Agreement.

d. **Conformance with THE TOWN/SCHOOLS Policies.** Consultant acknowledges that THE TOWN/SCHOOLS has certain policies regarding, but not limited to, such things as drug use, alcohol, firearms, safety, security, smoking, sexual harassment, and similar actions which will also apply to the representatives of Consultant engaged to provide services hereunder. Consultant undertakes to have all of Consultant's representatives providing services at any THE TOWN/SCHOOLS facility (including any facility of a customer or supplier of THE TOWN/SCHOOLS) and all of Consultant's representatives providing direct services hereunder, whether on or off THE TOWN/SCHOOLS facilities, to agree to observe all applicable THE TOWN/SCHOOLS' policies and to sign agreements so indicating. Should THE TOWN/SCHOOLS, for any reason, deem any of Consultant's representatives unacceptable, THE TOWN/SCHOOLS shall notify Consultant and Consultant shall, thereafter, neither send such representatives to the TOWN/SCHOOLS facility nor engage such representative in direct service for THE TOWN/SCHOOLS, on or off THE TOWN/SCHOOLS facilities, but shall perform its obligations hereunder using other representatives acceptable to THE TOWN/SCHOOLS.

e. **Criminal Background Check and Substance Screening.** Each representative of Consultant providing services at any TOWN/SCHOOLS facility and each of Consultant's representatives providing direct services hereunder, whether on or off THE TOWN/SCHOOLS facilities, shall be required to successfully undergo a Criminal Background Check and Substance Screening prior to performing any services under this Agreement. Consultant shall require such representatives to cooperate in such Check and Screening. Provided, however, that such Check and Screening shall not be required of any representative of Consultant for whom Consultant can demonstrate successfully passed a similar Check and Screening within one calendar year prior to the proposed commencement of such representative's services under this

# TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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Agreement. THE TOWN/SCHOOLS shall have the final decision in determining whether any such Check and Screening is similar to THE TOWN/SCHOOLS' Check and Screening.

## 14. Miscellaneous.

a. Waiver and Remedies. The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only on the written consent of THE TOWN/SCHOOLS and the Consultant. The remedies provided THE TOWN/SCHOOLS and Consultant herein shall be cumulative, and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

b. Titles; Recitals. Section headings and numbers used in this Agreement are included for convenience of reference only, and, if there is any conflict between any such numbers and headings, and the text of this Agreement, the text shall control. Each of the statements set forth in the premises of this Agreement is incorporated into the Agreement as a valid and binding representation of the party or parties to whom it relates.

c. Governing Law; Severability. This Agreement is entered in Rhode Island and shall be construed in accordance with and governed by the substantive laws of the State of Rhode Island without regard to the conflict of laws provisions thereof. Whenever possible, each provision (including without limitation any subparagraph or part thereof in Section 5 above) of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, and if any provision of this Agreement is held illegal, invalid or void, such provision may be changed to the extent reasonably necessary to make it valid and enforceable and the remainder of this Agreement shall not be affected or impaired thereby.

d. Entire Agreement. This Agreement, together with all Statements of Work now and hereafter attached hereto (which are hereby incorporated herein by reference), represent the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior written or oral agreements, side letter, proposal, bid, quote or the like with respect thereto.

IN WITNESS, WHEREOF, the duly authorized representatives of the parties have executed this Consulting Agreement as of the date and year first above written.

### THE TOWN OF WESTERLY/ WESTERLY PUBLIC SCHOOLS

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Date: \_\_\_\_\_

### CONSULTANT

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Date: \_\_\_\_\_

### TOWN MANAGER / SUPERINTENDENT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

# **TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS**

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## **STATEMENT OF WORK NO. 001**

THIS STATEMENT OF WORK dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between THE TOWN/SCHOOLS (the "THE TOWN/SCHOOLS") and \_\_\_\_\_ (the "Consultant") is entered into pursuant to the terms and conditions of that certain Consulting Agreement dated as of \_\_\_\_\_, 20\_\_\_\_, between THE TOWN/SCHOOLS and the Consultant (the "Agreement") which Agreement is incorporated herein by this reference. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

### **1. SERVICES:**

The Consultant agrees to:

### **2. DUE DATES:**

The above Services are to be performed as follows:

### **3. COMPENSATION:**

Consultant will be paid \_\_\_\_\_ for all services rendered. Consultant shall submit \_\_\_\_\_ invoices to THE TOWN/SCHOOLS for all services performed under this agreement. Each invoice shall identify the services performed and \_\_\_\_\_. Invoices shall be submitted directly to \_\_\_\_\_ for approval. Such invoices shall be payable within thirty (30) calendar days of approval by THE TOWN/SCHOOLS.

IN WITNESS, WHEREOF, THE TOWN/SCHOOLS and the Consultant have executed this Statement of Work as of the date first set forth above, subject to the provisions of the Agreement.

### **TOWN OF WESTERLY/ WESTERLY PUBLIC SCHOOLS**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

### **CONSULTANT**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

### **TOWN MANAGER/SUPERINTENDENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

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## Exhibit A

### **Standard Insurance and Indemnification Requirements**

General Conditions: Within ten (10) business days of the award or notice, or prior to the start of work, whichever comes first, the contractor will provide, pay for, and maintain in full force and effect the insurance outlined here for coverage's at not less than the prescribed minimum limits of liability. Such coverage is to remain in force during the life of the contract and for such additional time as may be required, and will cover the contractor's activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- H. Certificates of Insurance: The contractor will give the Town/Schools a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage's required here are in effect and specifying that the liability coverage's are written on an occurrence form and that the coverage's will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice to: Town of Westerly, 45 Broad Street, Westerly, Rhode Island, 02891 Attn: Purchasing Agent. Failure of the Town/Schools to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Town/Schools to identify a deficiency from evidence provided will not be construed as a waiver of the contractor's obligation to maintain such insurance.
- I. Insurer Qualification: All insurance will be provided through companies authorized to do business in the State of Rhode Island and considered acceptable by the owner, with an A.M. Best Rating of A-/VIII.
- J. Additional Insured: To the extent commercially available at no additional cost, the policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include the Town/Schools directors, officers, representatives, agents, and employees as additional insureds on a primary basis for work performed under or incidental to this contract.
- K. Retroactive Date and Extended Reporting Period: If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.
- L. Subcontractors' Insurance: The contractor will cause each subcontractor employed by contractor to purchase and maintain insurance of the types specified below. When requested by the owner, the contractor will furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- M. Waiver of Subrogation: The contractor will require all insurance policies in any way related to the work and secured and maintained by the contractor to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against Town/Schools, and all tiers of contractors or consultants engaged by them. The contractor will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
- N. Indemnification/Hold Harmless: The contractor shall indemnify, defend, and hold harmless the Town/Schools and, if applicable, their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees of counsel selected by the Town/Schools, arising out of or resulting from the performance of the work and /or the supplying of materials, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder.

#### II. Insurance Limits and Coverage:

- H. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverages of Insurance Services Office (ISO) policies, forms, and endorsements.
- I. If the contractor has self-insured retention's or deductibles under any of the following minimum required coverage's, the contractor must identify on the certificate of insurance the nature and amount of such self-insured retention's or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retention's or deductibles will be the contractor's sole responsibility.
- J. Commercial General Liability: The contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including

# TOWN OF WESTERLY / WESTERLY PUBLIC SCHOOLS

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bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits:

Minimum Limits:	\$1,000,000 each occurrence
	\$2,000,000 each occurrence if blasting is required
	\$2,000,000 general aggregate with dedicated limits per project site
	\$2,000,000 products and completed operations aggregate
	\$1,000,000 personal and advertising injury

Should blasting be required, all necessary permits for the use of explosives shall be obtained by the contractor or insured from the Fire Marshall.

Special hazards shall be covered if needed by endorsement to the Commercial Liability policy/policies as follows:

- 4) Property damage liability arising out of the collapse of or structural injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or to moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- 5) Property damage liability for injury to or destruction of property arising, directly or indirectly, from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 6) Property damage liability for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting therefrom.

- K. Automobile Liability: The contractor will maintain business auto liability coverage for liability arising out of any auto, including owned, hired, and non-owned autos.

Minimum Limits:	\$1,000,000 combined single limit each accident
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- L. Workers' Compensation: The contractor will maintain workers' compensation and employer's liability insurance. Waiver of subrogation in favor of the Town of Westerly shall apply.

Minimum Limits:	Workers' Compensation: statutory limit
Employer's Liability:	\$500,000 bodily injury for each accident
	\$500,000 bodily injury by disease for each employee
	\$500,000 bodily injury disease aggregate

- M. Umbrella/Excess Liability: The contractor will maintain coverage applying over the underlying Commercial General Liability, Automobile Liability, Pollution Liability (where applicable), and Employer Liability section of the Workers Compensation coverage. **The Town of Westerly shall have the sole discretion in increasing or reducing the Umbrella/Excess Liability coverage requirements depending on the scope and/or size of the work to be performed by Contractor/Bidder.**

Minimum Limits:	\$5,000,000 per occurrence/\$5,000,000 annual aggregate
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Coverage applies over the underlying Commercial General Liability, Automobile Liability, pollution liability (where applicable), and Employer Liability section of the Workers Compensation Coverage.

- N. Professional Liability (for consultants, engineers, and other individuals/businesses providing professional services)

Each Claim/Wrongful Act:	\$1,000,000
Annual Aggregate	\$1,000,000

Town of Westerly/Westerly Schools reserves the right to amend amounts of coverage required and type of coverage's provided based on work or service to be performed.